

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Linda Breathitt,

Alliance Companies	Docket Nos. RT01-88-000, -001, -002, -003, -004, -006, -007, -008, -009, -010, -011, ER99-3144-000, -001, -002, -003, -004, -005, -006, -007, -008, -009, -10, -011, -012, -014, EC99-80-000, -001, -002, -003, -004, -005, -006, -007, -008, -009, -010, -011, -012, -014,
Ameren Corporation	-002, -003, -004, -005, -006, -007, -008, -009, -010, -011, -012, -014,

On behalf of:

Union Electric Company
Central Illinois Public Service Company

American Electric Power Service
Corporation

On behalf of:

Appalachian Power Company
Columbus Southern Power Company
Indiana Michigan Power Company
Kentucky Power Company
Kingsport Power Company
Ohio Power Company
Wheeling Power Company

Consumers Energy Company
and Michigan Electric Transmission Company

Dayton Power and Light Company

Detroit Edison Company
and International Transmission Company

Docket No. RT01-88-000, et al.

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Exelon Corporation

On behalf of:

Commonwealth Edison Company
Commonwealth Edison Company of Indiana, Inc.

Docket No. ER01-2992-000

First Energy Corporation

On behalf of:

American Transmission Systems, Inc.
The Cleveland Electric Illuminating Company
Ohio Edison Company
Pennsylvania Power Company
The Toledo Company

Illinois Power Company

Docket Nos. RT01-84-000,
001
Docket Nos. ER01-123-000,
001, 002, 003, and 004,
Docket No. ER01-2999-000

Northern Indiana Public Service Company

Docket Nos. RT01-26-000, 001

Virginia Electric and Power Company

Docket No. ER01-2993-000

The Dayton Power and Light Company

Docket Nos. RT01-37-000,
001 and Docket No.
ER01-2997-000

American Electric Power Company
Appalachian Power Company
Columbus Southern Power Company
Indiana Michigan Power Company
Kingsport Power Company
Ohio Power Company
Wheeling Power Company

Docket No. ER01-2995-000

ORDER ON REQUESTS FOR REHEARING

(Issued December 20, 2001)

On July 12, 2001, the Commission issued an order in the above-captioned dockets addressing a compliance filing by the Alliance Companies regarding their proposed regional transmission organization (Alliance RTO). In this order we dismiss requests for rehearing and direct Alliance Companies to explore membership in the Midwest Independent System Operator (Midwest ISO). In our view, this approach offers the best opportunity for fostering RTO development in a way that will provide a seamless and robust market for millions of consumers in the Midwest.

I. Introduction

Today the Commission is acting on five interrelated orders intended to move the process forward in establishing an optimally sized regional transmission organization (RTO) in the Midwest and to support the establishment of viable, for-profit transmission companies that operate under an RTO umbrella and may, depending on their level of independence from market participants, perform certain of the RTO functions contained in the Commission's Order No. 2000.¹ In taking today's actions, we have made findings as to the RTO structure that we conclude best serves the public interest in the Midwest. Our decisions in these five orders recognize the realities and needs of the Midwestern wholesale electricity market and take into account the views of the Midwestern State commissions. However, our actions should not be construed to prejudge other types of RTOs in other parts of the country, including a structure in which a for-profit transmission company could be an umbrella RTO.

For two years now, since the issuance of Order No. 2000, electric industry participants in the Midwest, State commissions, and this Commission have struggled with an array of different proposals and issues and how best to achieve a seamless wholesale power market in the Midwest. While both Midwest ISO and Alliance Companies have spent considerable money and resources in developing and attempting to reconcile their competing proposals, the Commission is at a point where we must make some difficult decisions with respect to the competing proposals. Based on the record before us, and taking into account the views of the majority of the Midwestern State commissions, we conclude that Midwest ISO's proposal most fully complies with the vision and requirements of Order No. 2000, in particular the requirement that an RTO be of sufficient scope, and that the Midwest ISO therefore should serve as the foundation upon which a Midwest RTO should be built. In this regard, we are confident that the Alliance Companies' desire to be a viable transmission business can be accommodated under the Midwest ISO umbrella.

¹Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999) (Order No. 2000), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000) (Order No. 2000-A), aff'd, Public Utility District No. 1 of Snohomish County, Washington v. FERC, Nos. 00-1174, et al. (D.C. Cir. Dec. 11, 2001).

In today's five orders, we take the following specific steps:

- (1) approve the Midwest ISO as an RTO (Docket No. RT01-87-000 et al.);
- (2) approve International Transmission Company's (International Transmission) request to transfer operational control of its transmission facilities to Midwest ISO; and accept an agreement between International Transmission and Midwest ISO which would allow International Transmission to be an independent transmission company that would share certain RTO functions with the Midwest ISO (Docket No. ER01-3000-000 et al.); and
- (3) preliminarily approve the disposition of International Transmission's transmission facilities to an unaffiliated entity with no ownership interest in a market participant, thus facilitating a stand-alone transmission company under the Midwest ISO umbrella (Docket No. EC01-137-000);
- (4) conclude that Alliance Companies, which filed for approval as a separate RTO, lacks sufficient scope to exist as a stand-alone RTO; but direct Alliance Companies to explore how their business plan (including the proposal for National Grid to become the managing member of Alliance) can be accommodated within the Midwest ISO (Docket No. RT01-88-000 et al.); and
- (5) grant in part and defer in part National Grid's request for a declaratory order that it is not a market participant and dismiss Alliance Companies' business plan (Docket No. EL01-80-001 et al.).

We now turn to the specific actions taken in the above captioned dockets.

II. Background

The Commission has addressed the Alliance RTO in a series of orders,² and on January 24, 2001, ultimately found that Alliance Companies' proposal to create a for-profit transmission company or transco basically met the four characteristics and most of the functions discussed in Order No. 2000,

²See, e.g., Alliance Companies, et al., 89 FERC ¶ 61,298 (1999) (Alliance I Order), order on rehearing and compliance, 91 FERC ¶ 61,152 (2000) (Alliance II Order).

but directed further modifications.³ Concurrently with the Alliance IV Order, the Commission issued an order on the Settlement among the Midwest ISO, Alliance Companies, and others which was to provide for, among other things, an Inter-RTO Cooperation Agreement (IRCA) that would develop a seamless market in the region covered by the Alliance RTO and the Midwest ISO.⁴

On July 12, 2001, the Commission conditionally approved Alliance Companies' RTO filing submitted in compliance with Order No. 2000, subject to certain conditions.⁵ Among other things, the Commission was concerned that business decisions prior to implementation of an Alliance RTO were not being made independently, but by Alliance Companies. Therefore, it directed Alliance Companies to decide which of the alternative business plans proposed they intended to implement, within 45 days of the date of the order, and it further directed that from the date of the order an independent board be established to make all business decisions for the RTO consistent with the Commission's directives in GridFlorida LLC, et al., 94 FERC ¶ 61,363 at 62,325 (2001) (GridFlorida). It also noted, that until final RTO approval was granted, a stakeholder advisory committee should advise the independent board.⁶

With respect to the scope and configuration of Alliance RTO, the Commission's indication that Alliance Companies satisfied those requirements for scope and configuration under Order No. 2000 was based on the reasons previously stated in the Alliance III Order, and the fact that the Alliance RTO grew both physically (with the addition of new members, as well as the departing Midwest ISO members) and contractually (with the execution of the IRCA with the Midwest ISO). Finally, it reminded Alliance Companies of their continuing commitment to explore ways to expand their IRCA with neighboring RTOs.⁷

The Commission reiterated that although Alliance Companies' congestion management plan was an effective protocol for managing congestion and was consistent with the requirements of Order No. 2000 for so-called Day One operations, their long-term congestion management proposal was still a work in progress. Therefore, the Commission did not have enough information to rule on the proposal then, but would address Alliance Companies' congestion management plan when the completed proposal was filed under section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (1994).

³See Alliance Companies, et al., 94 FERC ¶ 61,070 at 61,622 (Alliance III Order), order denying reh'g and providing clarification, 95 FERC ¶ 61,182 (2001) (Alliance IV Order).

⁴See Illinois Power Company, et al., 95 FERC ¶ 61,183 (2001).

⁵See Alliance Companies, et al., 96 FERC ¶ 61,052 (2001) (Alliance V Order).

⁶Id. at 61,134-35.

⁷Id. at 61,135.

However, it encouraged Alliance Companies to resolve issues raised by protestors in their customer advisory process, and should substantial issues remain it would institute procedures to resolve such differences. The Commission also found that the Virginia State Corporation Commission's (Virginia Commission) competitive concerns regarding the pricing of mandatory incremental and decremental bids from generators for Day One operations was unsupported since Alliance Companies' proposal called for compensation to be at the applicable bid prices, which were capped at the party's authorized charges, if subject to regulatory approval. Therefore, the Commission found that there were no competitive concerns because bids from jurisdictional entities must be based on Commission-approved charges.⁸

Finally, the Commission found that Alliance Companies' proposed Planning Protocol was not a product of the Settlement, but instead was limited to establishing a planning protocol within the Alliance RTO individually. The Commission stated that to the extent joint planning with the Midwest ISO effects the Planning Protocol, Alliance Companies should amend it accordingly under section 205 of the FPA.⁹

III. Requests for Rehearing

Various requests for rehearing and/or clarification, as noted below, were filed, which raised issues in five primary categories: (1) independence; (2) scope and configuration; (3) planning; (4) congestion management; and (5) stakeholder concerns. A request was also made for the Commission to convene a mediation-type proceeding between Alliance Companies and the Midwest ISO for the purpose of attempting to resolve seams issues and to explore the development of a single Midwest ISO. The specific issues raised by petitioners are discussed separately below.

On August 8, 2001, the Virginia Commission, Illinois Commerce Commission, Indiana Utility Regulatory Commission, Michigan Public Service Commission, and West Virginia Public Service Commission (Joint Commissions) filed a motion for clarification and request for expedited action, or, in the alternative request for rehearing. On August 10, 2001, Alliance Companies filed a request for clarification and rehearing. On August 13, 2001, the Association of Businesses Advocating Tariff Equity, the Coalition of Midwest Transmission Customers, Indiana Office of Utility Consumer Counselor, Missouri Office of the Public Counsel, the Ohio Consumers' Counsel, and Public Interest Organizations (collectively, Midwest Intervenor) and the Illinois Commerce Commission, the Michigan Public Service Commission, the Indiana Utility Regulatory Commission, the Pennsylvania Public Utility Commission, and the Public Utilities Commission of Ohio (Midwest Commissions) filed a request for

⁸Id. at 61,138-39.

⁹Id. at 61,144.

rehearing. On August 17, 2001, the Public Utilities Commission of Ohio (Ohio Commission) filed an answer to the Joint Commissions' motion for clarification and/or request for rehearing. On August 27, 2001, Duke Energy North America, LLC (Duke) filed an answer and protest to Alliance Companies' request for clarification and rehearing. Finally, on September 12, 2001, Alliance Companies filed a motion for leave to answer and answer to the requests for rehearings and clarifications.

IV. Subsequent RTO-Related Actions

Subsequent to the filing of the rehearing requests in this and other pending RTO-related dockets, the Commission has undertaken an across-the-board assessment of RTO development, of the status of numerous ongoing proceedings involving RTO proposals, and of the ongoing changes in the electricity marketplace since the issuance of Order No. 2000. Several procedural steps provided additional information to assist us in moving forward with the development of RTOs that will meet the basic goals of the Federal Power Act. All of these recent activities, which are outlined below, have helped inform us in our resolution of the rehearing requests in these dockets.

First, during the week of October 15 through 19, 2001, the Commission held a public conference on various topics involving RTOs and the need for clear, appropriately standardized transmission tariffs and market rules. In addition, at the October 24, 2001 Commission meeting, we considered status reports on RTO efforts in various regions of the country, including the Midwest. On November 7, 2001, we issued an order which provided generic guidance on the continued processing of RTO filings and, which, among other things, stated that we intended to issue future orders addressing the pending filings and providing specific guidance and time lines to continue progress within the various RTO regions.¹⁰ On November 9, 2001, we issued an order which recognized that we must work closely with state commissions to create a seamless national wholesale electricity market and which stated our intent to create state-federal regional RTO panels to discuss issues related to RTO status and development.¹¹

With respect to the Midwest specifically, on November 9, 2001, the Commission sent a letter to all Midwest state utility commissioners asking them to respond to specific questions involving RTO development in the Midwest. In addition, on November 27, 2001, two of the Commissioners and Commission staff participated in an on-the-record state-federal RTO panel discussion on RTO issues with Midwest state utility commissioners. A transcript of the panel discussion was placed in the record in the above dockets.

V. Midwest State Commissions' Responses

¹⁰Electricity Market Design and Structure, 97 FERC ¶ 61,146 (2001).

¹¹State-Federal Regional RTO Panels, *et al.*, 97 FERC ¶ 61,182 (2001).

On November 30, 2001 and December 3, 2001, various state utility commissions filed responses to our letter dated November 9, 2001, concerning RTO formation in the Midwest to date.¹² Below we will describe the comments received as they relate to RTO structure in the Midwest and as to whether RTO development (including implementation of the IRCA) has been satisfactory to date. Comments regarding other areas such as the possible sharing of functions within a hybrid RTO will be addressed in other, more appropriate dockets.

Joint Commissions were unanimous in their support for a single RTO to administer the transmission system in the Midwest. Joint Commissions argue that multiple RTOs managed through seams agreements "[h]as not worked and will not work" in the Midwest.¹³ With regard to the matters before us, Joint Commissions argue that little progress has been made to date on implementing the IRCA agreement between the Midwest ISO and Alliance Companies, and that only the Midwest ISO has the infrastructure in place necessary to assume control over transmission facilities.¹⁴ Moreover, Joint Commissions contend that the lack of independence in the Alliance Companies' proposal as well as the pending merger between the Southwest Power Pool and Midwest ISO have further complicated implementation of the IRCA.¹⁵ Joint Commissions also caution that, while Appendix I of the Midwest ISO agreement may provide a useful framework to begin to analyze how functions could be shared under a hybrid RTO, such an approach should be evaluated on a case-by-case basis rather than in a generic determination.¹⁶

¹²The state public utility commissions of Michigan, North Dakota, Iowa, Arkansas, Pennsylvania, Virginia, Wisconsin, Oklahoma and Kentucky (Joint Commissions) filed a joint response. Supplemental responses were also individually filed by the Michigan Commission, the North Dakota Commission, the Oklahoma Corporation Commission and the Wisconsin Commission. Individual responses were filed by the Missouri Commission, the West Virginia Commission, the Arkansas Commission, the Indiana Regulatory Commission (Indiana Commission), the Public Utility Commission of Ohio (Ohio Commission), the Tennessee Regulatory Authority (TRA), the Kansas Corporation Commission (Kansas Commission), the South Dakota Public Utility Commission, the Nebraska Power Review Board (Nebraska Board), and the Virginia Commission. The Illinois Commerce Commission (Illinois Commission) filed two responses reflecting differing views. On December 12, 2001, National Grid filed a response to the filings of the state public utility commissions.

¹³Joint Commissions at 2.

¹⁴Id.

¹⁵Id.

¹⁶Id. at 10; see also, Missouri Commission at 6-7.

Joint Commissions conclude by detailing three areas of importance regarding Midwest RTO development. First, they argue that the Commission can advance Midwest RTO development by providing prompt guidance. Second, Joint Commissions indicate that the Commission should direct its resources to regions like the Midwest where there is a "[b]road regional consensus among state regulators to move forward with a single RTO."¹⁷ Lastly, they argue that there is a need for an advisory structure to provide state regulators a permanent place, separate from other stakeholders, from which to oversee RTO development.

In their supplemental comments, the Michigan Commission argues that careful attention needs to be paid to the fact that International Transmission has filed to leave Alliance Companies and join the Midwest ISO. According to the Michigan Commission, this creates serious operational and reliability concerns which render "[a]n already problematic IRCA wholly untenable to Michigan."¹⁸

The Indiana Commission states that it cannot participate due to a pending case before it. Likewise, the Missouri Commission states that, due to a pending case, it cannot express its view on the number and boundaries of RTOs in the Midwest but notes that over the past several years, it "[h]as worked toward promoting a single RTO environment in the Midwest."¹⁹

The West Virginia Commission agrees with the Joint Commissions that a seamless Midwest region "[c]an be efficiently achieved through a single RTO."²⁰ However, while the West Virginia Commission agrees that there has been little progress to date in implementing the IRCA, it believes that with, among other things, guidance from the Commission it could possibly work.²¹

The Nebraska Board, TRA, the Kansas Commission and the Illinois Commission response from Commissioners Harvill and Squires all support the call for a single RTO in the Midwest.²² The Illinois Commission response from Commissioners Hurley and Kretschmer indicates that multiple RTOs could be supported in the Midwest "[p]rovided that there are seams agreements in place to ensure the

¹⁷Id. at 14.

¹⁸Michigan Commission at 2.

¹⁹Missouri Commission at 1-2.

²⁰West Virginia Commission at 3.

²¹Id.

²²Nebraska Board at 2; TRA at 2; Kansas Commission at 1; Illinois Commission (Commissioners Harvill and Squires) at 2.

smooth operation of the market.²³ Finally, the Ohio Commission states that, while it desires to accommodate different RTO business models in the Midwest, "[s]eamlessness in the Midwest is our priority."²⁴ The Ohio Commission believes that the IRCA could provide a "meaningful" vehicle to accommodate different models, but only after both considerable Commission direction and attention by the parties.²⁵ For instance, the Ohio Commission argues that much work needs to be done in the area of adopting compatible standards between the Midwest ISO and Alliance Companies. As a solution, the Ohio Commission recommends that the Commission require Alliance Companies to adopt the Midwest ISO's existing systems in order to ensure standardization.²⁶

VI. Discussion

Although the Commission's Rules of Practice and Procedure do not generally permit answers to requests for rehearing, see 18 C.F.R. §§ 385.213(a)(2), 713(d) (2001), given the peculiarly complex nature and history of this proceeding and because the answers have aided us in clarifying certain issues, we will take the atypical step of accepting Duke's and Alliance Companies' answers in this instance.

1. Scope and Configuration

Midwest Intervenors argue that in the Alliance V Order the Commission approved the scope and configuration of the Alliance RTO by, in part, citing to the IRCA. However, they maintain that in other parts of the order, the Commission recognized that the IRCA was, at best, a work in progress, and that the IRCA was only a basis for the development of a seamless market. Therefore, they ask that the Commission grant rehearing, or, at a minimum, clarify its order so that it is clear that successful implementation of the IRCA is a prerequisite to any finding of adequate scope and configuration. In addition, Midwest Intervenors note that Alliance Companies and the Midwest ISO have not resolved operational issues to promote seamless operations and, therefore, request that the Commission require the Alliance RTO, PJM, and the Midwest ISO to negotiate seams agreements. They also ask that the Commission grant rehearing and clarify whether it intends to take measures necessary to create a single RTO in the region.

Similarly, Midwest Commissions ask that the Commission grant rehearing of its decision that the Alliance RTO satisfies Order No. 2000's scope and configuration requirement. They assert that the Commission should consider Settlement implementation as a key factor because the Commission relied

²³Illinois Commission (Commissioners Hurley and Kretschmer) at 2.

²⁴Ohio Commission at 1-2.

²⁵Id. at 2-3

²⁶Id.

upon implementation of the IRCA in support of its finding that the Alliance RTO satisfies Order No. 2000's scope and configuration requirement. They note that certain aspects of the Settlement and IRCA have not been appropriately implemented, and the absence of progress in implementation leads the Midwest Commissions to the conclusion that seams issues in the Midwest will not be adequately mitigated in a timely manner.

Midwest Commissions also contend that the lack of cooperation between the Alliance RTO and Midwest ISO with respect to the development of a real-time balancing market, a long-term congestion management protocol, and generator interconnection practices, among other things, demonstrates that the Midwest seams problems remain unresolved. As a remedy, Midwest Commissions ask that the Commission initiate mediation in the Midwest region to address Settlement implementation problems. Midwest Commissions state that the Commission could direct the parties to use the mediation process as a forum to address continued and expanded RTO development in the Midwest. They note that these discussions could include the future potential of a single RTO that would encompass the entire Midwest.

In their answer, Alliance Companies argue that the Commission should reject requests seeking to revisit the finding that the proposed scope and configuration of Alliance is consistent with Order No. 2000. They maintain that the various petitioners are wrong in their assertion that the Commission relied upon the IRCA as support for its finding of adequate scope and configuration. Rather, they argue, the Commission found in the Alliance III Order that the scope and configuration of the Alliance RTO were consistent with Order No. 2000, and made no mention of the IRCA. In addition, they contend that allegations that the IRCA is not being appropriately implemented are erroneous, and, in any event, the Settlement with the Midwest ISO contains provisions for parties to file unilateral proposals with the Commission should they be dissatisfied with the timeliness or the appropriateness of a procedure or protocol developed by the parties. Finally, Alliance Companies state that the Commission should reject petitioners' requests for further mediation between the Alliance Companies and the Midwest ISO as outside the scope of the proceeding.

Commission Determination

We agree with the petitioners and we grant rehearing of our prior finding that Alliance RTO has adequate scope. At the outset, we emphasize that a common theme in all of the Alliance proceedings to date has been the perception among a range of entities that a single RTO is needed in the Midwest. Until now, the Commission believed that, with full and fair stakeholder input, coupled with the Settlement and corresponding IRCA, the two proposed RTOs could seamlessly coexist. Unfortunately, as the state commissions point out, it has become apparent that despite the work done to date toward this end, a seamless Midwest market remains an unfulfilled promise.

Our earlier finding regarding the adequacy of the scope of the Alliance RTO relied, in part, on implementation of the IRCA, which was intended to provide the basis for a seamless market in the

territories served by the Midwest ISO and the Alliance RTO. However, since the Commission issued its order approving the Settlement and its July 12 Order approving Alliance RTO's scope, the confidence of the Commission and participating state commissions in the IRCA's ability to resolve seams issues has eroded. Specifically, as discussed below, the Midwest ISO and Alliance Companies filed status reports which indicate that the IRCA implementation has not progressed as expected.

The status reports indicate that certain provisions of the IRCA have not been fully satisfied. More importantly, regarding those provisions that have been addressed, significant seams issues still exist.²⁷ For example, the Settlement requires the parties to support the development of a standardized process to determine available transmission capability (ATC) within the region. However, the Midwest ISO and Alliance Companies each state that they will calculate ATC and Total Transmission Capability (TTC) using similar, but not identical, methods. Failure to use identical methods creates a seam that inhibits efficient market operations.²⁸ The Settlement also requires that the Midwest ISO and Alliance Companies facilitate one-stop shopping for transmission service. Detailed operating protocols and procedures necessary to accomplish this one-stop shopping have not yet been developed and agreed upon, however. In addition, the Settlement requires that the proposed RTOs cooperate in developing their imbalance markets to ensure compatibility for multi-RTO transactions. The Midwest ISO and the Alliance RTO have only developed compatible, and not common, energy imbalance markets. Moreover, the status reports indicate that both the Midwest ISO and the Alliance RTO will have separate security coordinators. This presents the potential for disputes over security matters on the respective grids -- disputes which would not exist if the two systems involved operated under the authority of a single security coordinator.

We have also taken additional comments from the various state commissions in the Midwest, and they overwhelmingly prefer a single Midwest RTO with Midwest ISO as the surviving RTO.

Another change affecting our ruling is International Transmission's election to withdraw from the Alliance RTO, thereby shrinking the Alliance RTO and concomitantly diminishing its scope.

As a result, we can no longer conclude that the proposed Alliance RTO has sufficient scope consistent with the factors identified in Order No. 2000; including, among other things, ATC

²⁷We note that this is a common theme in many of the state commissions' responses. See, e.g., Joint Commissions at 3: ("As for IRCA implementation, the Joint Midwest State Commissions had hoped that commitments to develop 'compatible' approaches to congestion management, transmission planning, calculation of available transmission capacity, etc., would lead to common solutions. Instead, little progress has been made. . .").

²⁸The Midwest ISO noted this point when it acknowledged that while similar methods are somewhat of an improvement, "[t]he situation is not the same as if one and the same system were being implemented by each of these entities." Midwest ISO Status Report at 26.

determinations and improved operations (including one-stop shopping) as well as elimination of the seams effects between neighboring RTOs.²⁹ As explained in Order No. 2000, a proposed RTO, even though it could not meet Order No. 2000's four characteristics, and, in particular, scope, on its own, "may be able to achieve sufficient 'effective scope' by coordination and agreements with neighboring entities, or by participating in a group of RTOs with either hierarchical control or a system of very close coordination."³⁰ Our earlier orders expected the IRCA discussions to provide the necessary coordination and agreement, but this expectation has yet to materialize into a concrete plan. For example, the Alliance RTO and the Midwest ISO will; use different methods to calculate ATC and TTC; do not yet have the detailed operating protocols and procedures needed to accomplish one-stop shopping; do not operate under the authority of a single security coordinator; and will not have a common energy imbalance market. In sum, the Alliance RTO has not achieved the necessary close coordination that was called for to achieve Order No. 2000's characteristics, and in particular, scope, that it could not achieve on its own.

While a more effective IRCA could have provided that necessary close coordination, and so have "adequately eliminated" the effects of seams between the proposed Alliance RTO and the Midwest ISO,³¹ the IRCA as currently drafted does not. While we find in another order considered contemporaneously with this order that the Midwest ISO as it has developed (with the addition of the Southwest Power Pool, for example) now has sufficient scope, the Alliance RTO has yet to achieve sufficient scope for it to satisfy the Order No. 2000 requirement.

2. Other Rehearing Issues

We will dismiss the requests for rehearing on the other issues raised by petitioners (*i.e.*, independence, planning protocol, congestion management, stakeholder process, and other procedural issues) based on our finding below that the public interest would best be served if Alliance were to join the Midwest ISO.³²

²⁹Order No. 2000 at 31,082-83; *see also, e.g., id.* at 31,083-84 (discussing other factors); 31,090-91 (the RTO must be the security coordinator for the region).

³⁰*Id.* at 31,083.

³¹*Id.*

³²We also note that, as a result of our action here, other dockets involving various aspects of Alliance Companies' RTO filing are terminated as a result of our finding that the public interest would
(continued...)

3. A Single Midwest RTO

As discussed above, Alliance RTO has been unable to meet the conditions necessary to give it sufficient scope. Thus, we cannot approve Alliance RTO as an RTO because it fails to meet the characteristics specified in Order No. 2000.

In addition, the views of many of the state commissions have persuaded us that allowing two RTOs in the Midwest would be a second-best solution that would not serve the best interests of customers throughout the Midwest. Combining the two entities should not only dramatically reduce costs (as there will now be one rather than two separate entities) but will achieve the goal of a seamless market in the Midwest. We conclude that the public interest would best be served if Alliance were to join the Midwest ISO. Of the two proposed RTOs, Alliance RTO and Midwest ISO, we believe that the Midwest ISO, because it is further along in its development and more fully complies with Order No. 2000, represents the foundation upon which a single Midwest RTO should be built. While we cannot approve Alliance RTO as a stand-alone RTO, we are confident that it can be a successful transco under the Midwest ISO's Appendix I. Therefore, we direct Alliance Companies to explore how their business plan (including National Grid) can be accommodated within the Midwest ISO, e.g., via Appendix I;³³ in doing so, we are mindful of the benefits that for-profit transcos can provide.³⁴ We note that numerous Alliance Companies,³⁵ as a result of merger conditions or commitments made in merger proceedings, are required to join an RTO. We realize that some companies were already

³²(...continued)

best be served if Alliance were to join the Midwest ISO. The following dockets are now terminated: Docket Nos. RT01-88-003, 004 and 006 through RT01-88-011; Docket Nos. ER99-3144-008 through ER99-3144-014; Docket Nos. EC99-80-006 through EC99-80-014; Docket Nos. RT01-37-000, -001; Docket Nos. RT01-84-000, -001; Docket Nos. RT01-26-000, -001; Docket Nos. ER01-123-000 through ER01-123-004; Docket No. ER01-2995-000; Docket No. ER01-2993-000; Docket No. ER01-2999-000; Docket No. ER01-2997-000; and Docket No. ER01-2992-000.

³³Appendix I creates a framework for membership and operation of independent transmission companies within the Midwest ISO. See Commonwealth Edison Company, et al., 90 FERC ¶ 61,192 (2000).

³⁴Order No. 2000 at 31,037.

³⁵These companies are American Electric Power Services Company, Exelon Corporation, FirstEnergy Corporation, Illinois Power Company and Virginia Electric and Power Company. See American Electric Power Company, et al., 90 FERC ¶ 61,242 (2000); Commonwealth Edison Company, et al., 91 FERC ¶ 61,036 (2000); Ohio Edison Company, et al., 94 FERC ¶ 61,291 (2001); Illinova Corporation, et al., 89 FERC ¶ 61,163 (1999); Dominion Resources, Inc., et al., 89 FERC ¶ 61,162 (1999).

members of Alliance or Midwest ISO prior to the merger and that additional companies, as a result of the Illinois Power Settlement, moved from Midwest ISO into the proposed Alliance RTO. By joining the Midwest ISO, these companies can satisfy their merger commitments.³⁶ Finally, we are mindful of the significant time and expense incurred by Alliance Companies to date³⁷ and we will consider proposals for recovery of all prudently incurred costs.³⁸

Consistent with this determination, Alliance Companies are directed to file a statement of their plans to join an RTO, including the timeframe, within 60 days of the date of this order. We expect that significant progress will be made during this period.

The Commission orders:

(A) The requests for rehearings are hereby dismissed, as discussed in the body of this order.

(B) Alliance Companies are hereby directed to file a statement of their plans to join an RTO, including the timeframe, within 60 days of the date of this order.

(C) The following dockets are hereby terminated: Docket Nos. RT01-88-003, 004 and 006 through RT01-88-011; Docket Nos. ER99-3144-008 through ER99-3144-014; Docket Nos. EC99-80-006 through EC99-80-014; Docket Nos. RT01-37-000,-001; Docket Nos. RT01-84-000, -001; Docket Nos. RT01-26-000, -001; Docket Nos. ER01-123-000 through ER01-123-004; Docket No. ER01-2995-000; Docket No. ER01-2993-000; Docket No. ER01-2999-000; Docket No. ER01-2997-000; and Docket No. ER01-2992-000.

By the Commission. Commissioner Breathitt dissented with a
separate statement attached.

(S E A L)

³⁶We note that we retain authority under Section 203(b) of the FPA to address concerns and issue supplemental orders as appropriate regarding commitments made in the merger proceedings.

³⁷See Comments of Alliance Companies, including supporting affidavits, filed on December 7, 2001, and revised on December 11, 2001, in Docket Nos. RM01-12-000 and RT01-88-000.

³⁸We recognize that the Midwest ISO may not be the ideal RTO for all of the Alliance Companies. (For example, Virginia Power may prefer to join another RTO.) If so, those companies should explore membership in another RTO.

Linwood A. Watson, Jr.,
Acting Secretary.
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Alliance Companies, et al.

Docket Nos. RT01-88-000, 001, 002, 003, 004 006,
007, 008, 009, 010, 011, ER99-3144-000, 001, 002,
003, 004, 005, 006, 007, 008, 009, 010, 011, 012,
014, EC99-80-000, 001, 002, 003, 004, 005, 006,
007, 008, 009, 010, 011, 012, 014, RT01-37-000,
001, RT01-84-000, 001, RT01-26-000, 001, ER01-
123-000, 001, 002, 003, 004, ER01-2995-000,
ER01-2993-000, ER01-2997-000, and ER01-2992-
000

(Issued December 20, 2001)

Breathitt, Commissioner, dissenting:

Since the Alliance Company's application was submitted to the Commission two and a half years ago, I have supported Alliance's business model through affirmative votes in the five orders applying the Order No. 2000 criteria to the Alliance proposal. Based on the Commission's guidance and encouragement, the Alliance member companies have expended significant energy, time and expense in developing and implementing their proposal. The Commission also has expended considerable resources in processing the Alliance's application.

Today's order abruptly changes the landscape in the Midwest by concluding that Alliance lacks sufficient scope to exist as a stand-alone RTO, and by directing the Alliance Companies to explore how their business plan can be accommodated within the Midwest RTO. I believe that Alliance has worked in good faith to satisfy the characteristics and functions established in Order No. 2000. Alliance tells us it could be operational in the first quarter of 2002 pending the necessary FERC approvals. By its own estimation, Alliance has expended approximately \$75 million in start-up costs - excluding legal and regulatory expenses. At the issuance of this order, these dollars will become stranded costs - to be borne, at least in part, by ratepayers in the Midwest. For the Commission now to find that Alliance does not satisfy the requirements of Order No. 2000 is an action of major consequence, and it is one that I am not ready to take.

The rehearing order relies heavily on the comments of state commissions, which generally favor one RTO for the Midwest. That view is not unanimous, however. I would like to highlight the

comments of the Public Utilities Commission of Ohio, which has offered constructive ideas for the Inter-RTO Cooperation Agreement (IRCA), reached in Docket No. ER01-123-000, to provide for a meaningful platform upon which different RTO business models could operate seamlessly in the Midwest. In addition, Commissioners Kretschmer and Hurley of the Illinois Commerce Commission assert that the Midwest is capable of supporting multiple RTOs provided that there are seams agreements in place to ensure the smooth operation of the market. I fully supported the IRCA, and would have continued working with the parties, using the IRCA as a basis on which to allow the MISO and Alliance to function as one market. The comments of the Ohio and Illinois commissioners and recent pleadings submitted by the Alliance Companies propose several avenues in this regard that I believe merit the Commission's consideration.

Commissioners Kretschmer and Hurley also observe that FERC allowed Illinois' three largest utilities to exit the Midwest ISO -- at the cost of \$60 million -- to join the Alliance RTO. They point out that to force fit one RTO on the Midwest could cause many months of delays and cost millions of dollars more. I share these concerns, and agree that it is counterproductive to require a single RTO in the Midwest after both MISO and the Alliance have already invested so many resources to develop their operations based upon the preferences of their member companies.

In conclusion, I cannot participate in this sudden departure from the road map I believe we drew in our prior Alliance orders. In my view, the Commission has not done all it should to allow Alliance to develop as an RTO that could co-exist with the Midwest ISO. For this reason, I respectfully dissent. For now, I will take comfort in the assurance that appears in this order and in the companion orders that the Commission's actions today "should not be construed to prejudge other types of RTOs in other parts of the country, including a structure in which a for-profit transmission company could be an umbrella RTO."

Linda K. Breathitt
Commissioner